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## **Integrating Local Waterfront Revitalization into Local Comprehensive Planning and Zoning**

Patricia E. Salkin  
*Touro Law Center*, [psalkin@tourolaw.edu](mailto:psalkin@tourolaw.edu)

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ARTICLES

**Integrating Local Waterfront Revitalization  
Planning into Local Comprehensive  
Planning and Zoning**

PATRICIA E. SALKIN<sup>1</sup>

**Introduction**

Earlier predictions that by 2010 more than half of the United States population would reside within fifty miles of the coastline were realized by 2004 when it was reported that 53 percent of the population resides in coastal counties,<sup>2</sup> contributing to the mounting pressures on waterfront development. Fortunately, state and local governments have a number of effective regulatory tools to protect, preserve, and promote sustainability throughout the coastline. One of the planning techniques, the use of local waterfront revitalization plans, has great potential to efficiently guide community and coastal development in a coordinated fashion

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1. Patricia E. Salkin is Associate Dean and Director of the Government Law Center of Albany Law School. Dean Salkin is grateful for the research assistance of Albany Law School students Michael Donohue, Allyson Phillips and Stacey Stump.

2. Steven F. Edwards, *Estimates of Future Demographic Changes in the Coastal Zone*, 17 COASTAL MGMT. 229 (1989). See also, KRISTEN M. CROSSETT ET AL., NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, POPULATION TRENDS ALONG THE COASTAL UNITED STATES: 1980-2008 (Sept. 2004) ("Coastal counties constitute only 17 percent of the total land area of the United States (not including Alaska), but account for 53 percent of the total population." *Id.* at 6. The authors also note, "Since 1980, population density has increased in coastal counties by 65 persons per square mile, or by 28 percent. By 2008, it is expected to increase by 13 persons per square mile, or 4 percent." *Id.* at 7.).

across municipal boundaries. Coordination includes intermunicipal and intergovernmental cooperation and consistency as well as coordination between planning and land use controls within the coastal zone and within the boundaries of coastal communities. Last amended in 1996, the federal Coastal Zone Management Act (CZMA) is currently due for reauthorization and legislation is pending before Congress.<sup>3</sup> Part I of this article examines the history of the CZMA with a particular examination of the Act's impact on local comprehensive land use planning, and it includes a brief discussion of the implementation of the CZMA in various states. Part II focuses on the New York State Coastal Zone Management Program and its requirements for consistency and local land use planning. Part III examines the comprehensive land use plan in New York and the level of coordination between this planning technique and state funded Local Waterfront Revitalization Programs (LWRP). It highlights the lack of legal guidance in New York regarding the relationship between these two documents. This Part also examines how some other states have interpreted or defined coordination and consistency between local comprehensive land use plans and locally developed plans pursuant to state coastal zone programs. The article concludes with the recommendation that a statutory change is needed in New York to directly link the LWRP to local comprehensive land use plans to achieve a more integrated planning and zoning regime within individual municipalities (as well as vertical consistency with state coastal policies), and to provide an effective enforcement mechanism for the LWRP beyond initial state approval of the plan.

### **I. History of the Coastal Zone Management Program**

The Coastal Zone Management Act of 1972,<sup>4</sup> implementing the national Coastal Zone Management Program, is administered at the federal level by the Department of Commerce under the direction of the National Oceanic and Atmospheric Administration (NOAA), and at the state level by an agency designated by each

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3. See <http://coastalmanagement.noaa.gov/pcd/legislation.html> (last visited Apr. 16, 2005). See also, Coastal Zone Enhancement Reauthorization Act of 2005, S. 360, 109th Cong. (2005). It has been suggested that due to federal budget cutbacks and regulatory changes, the future of coastal resource management will necessitate an increased state and local role. See JULIAN CONRAD JUERGENSMEYER & THOMAS E. ROBERTS, LAND USE PLANNING AND CONTROL LAW 551 (1999).

4. Pub. L. No. 89-454, 80 Stat. 203 (codified as amended at 16 U.S.C. §§1451-65 (2000)). This law was most recently amended by the Coastal Zone Protection Act of 1996, Pub. L. No. 108-415, 118 Stat. 2337 (1996).

state or territory.<sup>5</sup> The primary purpose of the Act was to increase state involvement in efforts by the federal government to protect the coastal zone.<sup>6</sup> The Act was a response to a growing concern that the nation's coasts were becoming polluted due to the "piecemeal development of coastal ecosystems without an overall strategy for comprehensive coastal management."<sup>7</sup> Some of the supporters of the CZMA felt that it should have been part of a larger national land use management initiative.<sup>8</sup> A broader land use statute meant to supplement CZMA, the Land Use Policy Act,<sup>9</sup> failed, while CZMA was successful—partly due to the fact that it both aided development while preserving the environment.<sup>10</sup> The Act's purpose, in part,

to encourage and assist states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible development . . . ,<sup>11</sup>

provides the opportunity for states to work with local governments to achieve a shared land use vision for the coastline and coastal resources.

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5. All state management programs must first be approved by the Secretary of Commerce in order to be adopted. 16 U.S.C. §§ 1455-56.

6. Sierra B. Weaver, *Local Management of Natural Resources: Should Local Governments be Able to Keep Oil Out?*, 26 HARV. ENVTL. L. REV. 231, 237 (2002) (citing 16 U.S.C. §§ 1451-1452 (1994 & Supp. V. 1999)). The "coastal zone" is defined as "the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states . . . . The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise." 16 U.S.C. § 1453.

7. 118 CONG. REC. 14,170-71 (1972) (statement of Sen. Hollings).

8. Marc C. Poirier, *Environmental Justice and the Beach Access Movements of the 1970s in Connecticut and New Jersey: Stories of Property and Civil Rights*, 28 CONN. L. REV. 719, 751 (1996) (citing CHARLES M. LAMB, LAND USE POLITICS AND LAW IN THE 1970s 32-33 (1975)).

9. National Land Use Policy Act of 1970, S. 3354, 91st Cong. (1970). See also Introduction of the National Land Use Policy Act of 1970, 116 Cong. Rec. 1757 (1970).

10. See Poirier, *supra* note 8.

11. Coastal Zone Management Act of 1972, Pub. L. No. 92-583, 86 Stat. 1280 (1972).

Currently thirty-four states and U.S. territories have coastal zone management agencies that have been approved by NOAA.<sup>12</sup> Though involvement is voluntary, the federal government offers two strong incentives for states to enact a coastal management program: control over all federal and state activity in the coastal zone, as well as funding to implement the program.<sup>13</sup> Once a state's coastal program has been approved by the Secretary of Commerce, federal agencies can only undertake activity or issue permits affecting the coastal zone if they are deemed "consistent to the maximum extent practical" with the state's coastal policies.<sup>14</sup> Similarly, there is a requirement that the state coastal management program (CMP) coordinate with other state agencies to comply with the state's policies. This consistency review process has been labeled one of "reverse preemption" by the state agency.<sup>15</sup> In addition to the regulatory powers gained by creating a CMP, states also receive funding from the federal government for its administration.<sup>16</sup>

Participation and cooperation with local governments and other area-wide agencies is necessary for approval of a state's

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12. NOAA, Office of Ocean and Coastal Resource Management, *Celebrating 30 Years of the Coastal Zone Management Act*, at <http://www.ocrm.nos.noaa.gov/czm> (last visited Dec. 1, 2004). The thirty-four states and territories approved and participating in the program include: Alabama, Alaska, American Samoa, California, Connecticut, Delaware, Florida, Georgia, Guam, Hawaii, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Northern Mariana Islands, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Virgin Islands, Virginia, Washington, and Wisconsin.

13. 16 U.S.C. § 1455. The 1980 amendments to the CZMA provided financial incentives for states to redevelop their deteriorated waterfronts. See Robert F. Goodwin, *The Effectiveness of the Coastal Zone Management Programs in Redeveloping Deteriorating Urban Ports and Waterfronts*, (Washington Sea Grant Program 1997), available at [www.wsg.washington.edu/outreach/mas/coastal/newdirections.html](http://www.wsg.washington.edu/outreach/mas/coastal/newdirections.html); see also Laurina M. Spolidoro, *Area Contingency Plans: Is the Coastal Zone Management Act on a Collision Course with Unfettered Oil Spill Response?*, 27 WM. & MARY ENVTL. L. & POL'Y REV. 755 (2003).

14. 16 U.S.C. § 1456(c)(1)(A). For an in-depth discussion of CZMA's consistency provisions, see Edward M. Cheston, *An Overview and Analysis of the Consistency Requirement under the Coastal Zone Management Act*, 10 U. BALT. J. ENVTL. L. 135 (2003).

15. Matthew Sokol, *Coastal Zone Management in New York*, 9 ENVTL. L. IN N.Y. 5 (1998) (citing Michael J. Straub, *The West Coast of New England: A Case For the Inclusion in the Federal Coastal Management Program*, 16 VT. L. REV. 749, 755 (1992)).

16. The contribution must be matched by the state pursuant to the yearly federal-to-state ratio. 16 U.S.C. § 1455(a)(1). For states whose management programs were approved prior to 1990, this ratio is 1:1.



management program.<sup>17</sup> The drafters of CZMA recognized that for the Act to be successful, it needed to be implemented at the local level, given that significant land use controls are adopted and administered by municipalities.<sup>18</sup> States are required to establish an effective plan for continuing coordination between the management agency and other local bodies.<sup>19</sup> States are required to designate a single agency to receive and administer grants for the management program,<sup>20</sup> as the Act permits the states to act “through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies)” in managing the coastal zone program.<sup>21</sup> This authority includes the power:

- A. To administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and
- B. To acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.<sup>22</sup>

While states may have some authority to make decisions that conflict with local laws, where the management agency makes any decision “which would conflict with any local zoning ordinance, decision, or other action,” the agency must send notice to the local government and allow a thirty-day comment period.<sup>23</sup> This requirement ensures continued intergovernmental dialogue and cooperation.

NOAA also provides states with funds necessary to enhance their waterfronts.<sup>24</sup> Grants are provided pursuant to the follow-

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17. *Id.* § 1455(d)(1).

18. Sokol, *supra* note 15, at 72.

19. 16 U.S.C. § 1455(d)(3).

20. *Id.* § 1455(d)(6).

21. *Id.* § 1455(d)(10).

22. *Id.* § 1455(a)(10)(A), (B).

23. *Id.* § 1455(d)(3)(B)(i).

24. *See id.* § 1455a. The Coastal States Organization has asked the federal government to provide \$85 million in funding for fiscal year 2005 to Coastal Zone Management Grants plus an additional \$30 million for Coastal Resource Improvement Grants (including nonpoint pollution and habitat conservation). They note that “[i]n Public Law 106-291, Title VIII, Congress set aside \$520 million in fiscal year 2004 for NOAA ‘coastal conservation activities.’ CSO recommends reauthorization and extension of a coastal conservation account and full funding at a minimum of \$520 million.” *See Coastal States Organization, State Recommendations FY '05 NOAA Coastal*

ing objectives: to preserve or restore specific areas of the state because of their conservation, recreational, ecological, or aesthetic values;<sup>25</sup> or contain one or more resources of national significance;<sup>26</sup> to redevelop deteriorating or underutilized urban waterfronts or ports;<sup>27</sup> to provide public access to public beaches, coastal waters and areas of recreational, historical, aesthetic, ecological or cultural significance;<sup>28</sup> or to develop a coordinated process for regulating permits for aquaculture facilities.<sup>29</sup> Under the Act, states are authorized to allocate a portion of "coastal resource improvement program" grants received to local governments or area-wide agencies,<sup>30</sup> a regional agency, or an interstate agency.<sup>31</sup>

Coastal states, beginning with Michigan in 1978, sought and obtained federal approval for individual state coastal zone management programs.<sup>32</sup> With the federal funding flowing to the states, state governments typically re-grant dollars to local governments for a variety of land use planning and zoning initiatives including: development of local land use plans, feasibility and natural features studies, drafting of related provisions in local zoning ordinances, and waterfront redevelopment studies.<sup>33</sup>

## II. New York's Coastal Zone Management Program

Roughly 90 percent of the State's population and a significant amount of economic activities are concentrated along New York's waterfront,<sup>34</sup> making planning for the protection and development

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*Funding: Supporting Healthy Coasts & Strong Coastal Communities*, available at [www.coastalstates.org/documents/committees/appropriations/cso%20Funding%20request%20Fact%20sheet\(NOAA\).pdf](http://www.coastalstates.org/documents/committees/appropriations/cso%20Funding%20request%20Fact%20sheet(NOAA).pdf) (last visited Apr. 16, 2005).

25. 16 U.S.C. § 1455a(b)(1)(A).

26. *Id.* § 1455a(b)(1)(B) (including restoration or enhancement or shellfish production.)

27. These waterfronts or ports must be designated by the state as "areas of particular concern" pursuant to 16 U.S.C. § 1455(d)(2)(C). *Id.* § 1455a(b)(2).

28. *Id.* § 1455a(b)(3).

29. *Id.* § 1455a(b)(4).

30. "Area-wide agencies" as designated by section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. § 3334) (2000).

31. 16 U.S.C. § 1455a(e).

32. Tricia A. Sherick, *A Comparison of the Coastal Zone Management Policies of the Atlantic and Pacific Coastal Regions Versus Programs Implemented in Selected Great Lakes States: The Case for Greater Application of the Public Trust Doctrine in Great Lake States Coastal Management Policy*, 28 U. Tol. L. Rev. 459, 476 (1997).

33. See generally, NOAA, *Coastal Services Center: Funding Opportunities*, at <http://www.csc.noaa.gov/funding/> (last visited May 15, 2005).

34. NYSDOS Division of Coastal Resources, *Local Waterfront Revitalization Program (LWRP)* available at [http://nyswaterfronts.com/aboutus\\_LWRP.asp](http://nyswaterfronts.com/aboutus_LWRP.asp) (last visited Apr. 16, 2005).

of the waterfront a critical state and local priority.<sup>35</sup> Although New York State began participating in the Coastal Zone Program in November of 1974,<sup>36</sup> it was not until 1981 that the Legislature enacted the Waterfront Revitalization and Coastal Resources Act (WRCRA).<sup>37</sup> Administered by the Department of State's Division of Coastal Resources, it covers 250 coastal municipalities along 3,200 miles of the State's coastline.<sup>38</sup> New York's Coastal Management Program serves as an advocate for specific, desired coastal actions.<sup>39</sup> The Program is responsible for, among other things, coordinating existing State programs, activities, and decisions that affect coastal areas.<sup>40</sup>

A main problem that WRCRA sought to address was that the various government agencies were not required to coordinate their plans, and as a result, decisions affecting the appropriate uses of the State's coastal resources were inconsistent.<sup>41</sup> In an effort to coordinate actions, the CMP contains coastal policies that all state agencies are required to advance toward their logical conclusion, not allowing one policy to override another.<sup>42</sup> Actions by federal or state agencies affecting New York's coast must be consistent with the State's forty-four coastal policies, which aim to both

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35. N.Y. EXEC. LAW § 910 (McKinney 1996) states, "The social and economic well-being of the general welfare of the people of the state are critically dependent upon the preservation, enhancement, protection, development and use of the natural and man-made resources of the state's coastal and inland waterways."

36. See Patricia E. Salkin, *Regional Planning in New York State: A State Rich in National Models, Yet Weak in Overall Statewide Planning Coordination*, 13 PACE L. REV. 505, 544-45 (1993) (While the Department of State, through its Division of State Planning, took an early lead in developing the State's coastal zone management program, from 1974 through 1976 the Department of Environmental Conservation (DEC) was the major subcontractor for the program, and funding flowed to DEC until 1981).

37. N.Y. EXEC. LAW §§ 910-20.

38. For more information about the Department of State's Division of Coastal Resources, see <http://nyswaterfronts.com/index.asp> (last visited Feb. 3, 2005). In 1986 the Act was amended to extend the reach of the Act to New York's inland waterways under certain conditions. Act of July 21, 1986, ch. 366, 1986 N.Y. LAWS § 762.

39. NYSDOS, COASTAL MANAGEMENT PROGRAM, STATE COASTAL POLICIES 1 (Apr. 2002), available at [http://nyswaterfronts.com/downloads/pdfs/State\\_Coastal\\_Policies.pdf](http://nyswaterfronts.com/downloads/pdfs/State_Coastal_Policies.pdf) [hereinafter COASTAL POLICIES].

40. *Id.*

41. See N.Y. EXEC. LAW § 910 ("The legislature further finds that it is the intent of the people of the state that coordinated and comprehensive policy and planning for preservation, enhancement, protection, development and use of the state's coastal and inland waterway resources take place to insure the proper balance between natural resources and the need to accommodate the needs of population growth and economic development.")

42. Press Release, NYSDOS, Consistency Review, available at <http://www.nys-waterfronts.com/consistency.asp> (last visited Apr. 12, 2005).



guide future development; “[r]estore, revitalize and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other compatible uses”<sup>43</sup> and to protect the state’s coastal resources.<sup>44</sup> Ultimately, these policies are designed to achieve a “balance between economic development and preservation that will permit the beneficial use of coastal and inland waterway resources while preventing loss of marine resources and wildlife, diminution of open space areas and public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems,”<sup>45</sup> and to assure that actions taken by state agencies will not be in contravention of the State’s long-term commitment to achieve the most beneficial use of coastal resources.<sup>46</sup>

The policies outlined by the CMP serve as a checklist for state agencies when they are planning the development of coastal areas, serving both to promote the use of coastal resources and to protect them. State agencies are “required to adhere to each policy statement as much as is legally and physically possible,”<sup>47</sup> suggesting perhaps that even though state agencies are expected to adhere to these policies, strict adherence is not the standard. In addition, the policies guide local governments in the preparation of LWRPs.<sup>48</sup> The policies are grouped into eleven major categories.<sup>49</sup>

The following policies are designed to promote the use of coastal resources: revitalize underutilized waterfronts (Policy 1); facilitate water dependent uses (Policy 2); expand the State’s major ports (Policy 3); expand the State’s commercial fishing industry (Policy 10); expand public access and water related recreation (Policies 9, 19-22); develop coastal energy resources (Policy 27, 29); redevelop the existing built environment (Policies 1, 4, 5); and expedite permitting procedures (Policy 6).<sup>50</sup>

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43. STATE COASTAL POLICIES, *supra*, note 39.

44. *Id.*

45. N.Y. EXEC. LAW § 912(1); N.Y. COMP. CODES R. & REGS. tit. 19, § 600.1(6) (2004) [hereinafter N.Y.C.C.R.R.].

46. *Id.*

47. COASTAL POLICIES, *supra* note 39.

48. NYSDOS Division of Coastal Resources, *New York State Coastal Policies*, available at [http://nyswaterfronts.com/consistency\\_coastalpolices.asp](http://nyswaterfronts.com/consistency_coastalpolices.asp) (last visited Apr. 16, 2005).

49. *Id.* The categories are: development, fish and wildlife, flooding and erosion, general safeguards, public access, recreation, historic and scenic resources, agricultural lands, energy and ice management, air and water resources, and wetlands.

50. STATE COASTAL POLICIES, *supra* note 39.

The following resources have been identified as being in need of protection: significant fish and wildlife habitats (Policies 7, 8); the traditional character and purposes of small harbors (Policy 4); historic and cultural resources (Policy 23); exceptional scenic areas (Policy 24); agricultural land (Policy 25); dunes, beaches, barrier islands, and other natural protective features (Policy 12); water and air resources (Policies 31, 33, 26-28, 40-43); and wetlands (Policy 44).<sup>51</sup>

In addition to the policies addressing the protection of certain resources and the promotion of the use of coastal areas, other policies provide that when engaging in certain major activities, extra care must be taken not to impair the value of the area. The following are the activities mentioned: siting energy facilities (Policy 17); dredging for navigation, mining, and excavation in coastal waters (Policy 15); managing solid wastes (Policy 39); ice management practices (Policy 28); siting and building structures in erosion hazard areas (Policies 11, 13, 14, 16, 17); and adequate consideration of State and public interests for all major coastal activities (Policy 18).<sup>52</sup>

All of the State Coastal Policies are derived from existing laws and regulations administered by state agencies.<sup>53</sup> Agencies including the Department of Environmental Conservation, the Office of Parks, Recreation and Historic Preservation, and the Public Service Commission, create programs that carry out the state policies. Executive Law Article 42 and the State Environmental Quality Review Act require that actions by state agencies within the Coastal Areas be consistent with State Coastal Policies.<sup>54</sup>

Prior to the final passage of WRCRA, the Act was met with criticism that the state would be usurping too much land use authority from local governments.<sup>55</sup> To counter this sentiment, the Act was redrafted to include the involvement of local governments in the management of their waterfronts as a major component of the State Coastal Program.<sup>56</sup> Following the philosophy espoused in the federal Coastal Zone Management Act and the actions taken by other state participants in the CZMA program, New

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51. *Id.*

52. *Id.* at 3.

53. *Id.*

54. N.Y. EXEC. LAW § 910-922 (McKinney 1996).

55. See Nicholas A. Robinson, *Law-Making for State's Coastal Management*, N.Y.L.J. (1980).

56. *Id.* The Legislature also considered using a regional approach to coastal zone management that had recently been enacted in California. *Id.*

York takes a permissive and suggestive approach in encouraging local governments to become active participants and partners in the program.

### A. Developing the LWRP

New York encourages municipalities to create LWRPs,<sup>57</sup> offering an opportunity for local control over land use matters within the municipal coastal areas.<sup>58</sup> Participating municipalities develop a plan (LWRP) for their waterfront, which is a "locally prepared, land and water use plan and strategy for a community's natural, public, working, or developed waterfront through which critical issues are addressed."<sup>59</sup> Local governments that decide to create an LWRP receive technical<sup>60</sup> and financial assistance<sup>61</sup> from the Division of Coastal Resources. An LWRP is "both a plan and a program,"<sup>62</sup> as the term refers both to the planning document prepared by the municipality as well as the organizational structure and local laws that implement its policies. Once developed, LWRPs become amendments to the state's coastal management program, and "in effect, become the policies and standards of the local government, the State of New York, and the federal government."<sup>63</sup> Ensuring that the LWRPs are similarly integrated into the fabric of local land use controls may not be so evident.

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57. N.Y. EXEC. LAW § 915 "Optional local government waterfront revitalization programs for coastal areas and inland waterways." *See also*, 19 N.Y.C.C.R.R. § 601.

58. "Coastal area" is defined as including "(a) the state's coastal waters, and (b) the adjacent shorelands, including landlocked waters and subterranean waters, to the extent such coastal waters and adjacent lands are strongly influenced by each other including, but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs, inter-tidal estuaries and erosion prone areas." N.Y. EXEC. LAW § 911(1).

59. NYSDOS, Division of Coastal Resources, *LWRPs – What is it?*, available at [http://www.nyswaterfronts.com/aboutus\\_LWRP.asp](http://www.nyswaterfronts.com/aboutus_LWRP.asp) (last visited Dec. 1, 2004).

60. N.Y. EXEC. LAW § 917.

61. N.Y. EXEC. LAW § 918.

62. NYSDOS, Division of Coastal Resources, "Local Waterfront Revitalization Program," available at [http://nyswaterfronts.com/aboutus\\_LWRP.asp](http://nyswaterfronts.com/aboutus_LWRP.asp) (last visited Apr. 16, 2005).

63. *Stutchin v. Town of Huntington*, 71 F. Supp. 2d 76, 89 (E.D.N.Y. 1999). This lengthy opinion contains a detailed description of the process which the Department of State's Coastal Resources department undertakes to determine whether a proposed action is consistent with state and local coastal zone policies. The Court relied on the testimony of Steve Resler, the Supervisor of Consistency Review and Analysis at the Department of State, who served as the sole witness for the defendants. Resler testified that he specialized in the development of Local Waterfront Revitalization Programs, and had helped the municipalities to develop their LWRP by providing technical assistance to the governments in the development of a new zoning district, titled COD1. A property owner was challenging dock size restrictions imposed by COD1.

Local governments acting individually or two or more local governments acting jointly may develop and submit a waterfront revitalization program to the Secretary of State.<sup>64</sup> Municipalities are “strongly encouraged” but not required, to consult, during the plan preparation, with other entities that may be affected by their programs.<sup>65</sup> This has been touted as one additional significant success of the LWRP process – in that it has served as a positive catalyst for promoting voluntary intermunicipal cooperation among multiple (coastal) local governments in the State.<sup>66</sup> The Secretary of State is charged with the responsibility of preparing and distributing guidelines that are to be followed when preparing local waterfront revitalization programs.<sup>67</sup> In addition, the Secretary is statutorily required to provide technical assistance including counsel and advice to municipalities upon their request.<sup>68</sup> While the Executive Law sets forth a list of items that are to be included in the LWRP,<sup>69</sup> the statute is silent regarding the rela-

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64. N.Y. EXEC. LAW § 915(1).

65. *Id.* at § 915(3) stating that local governments should reach out to “local governments, county and regional agencies, appropriate port authorities, community based groups and state and federal agencies.”

66. See John R. Nolon, *Grassroots Regionalism Through Intermunicipal Compacts*, 73 ST. JOHN'S L. REV. 1011, 1034 (1999). (In describing second generation intermunicipal agreements in New York, Professor Nolon comments that these are a result of the “steady influence of the Department of State, through its Division of Coastal Resources and Waterfront Revitalization . . . funding, technical assistance, and emphasis on intermunicipal approaches to coastal resources protection . . .” Professor Nolon cites to examples including the Long Island Sound, Hudson River Towns, Manhasset Bay and Oyster Bay-Cold Spring Harbor. *Id.* at 1034.)

67. N.Y. EXEC. LAW § 915(4).

68. N.Y. EXEC. LAW § 917.

69. The LWRP is to contain, at a minimum:

- a. Boundaries of the waterfront area; b. An inventory of natural and historic resources of the waterfront area to be protected; c. A statement of the goals and objectives of the program; d. Identification of the uses, public and private, to be accommodated in the waterfront area; e. Description of proposed means for long-term management and maintenance of waterfront development and activities including organizational structures and responsibilities and appropriate land use controls; f. Description of necessary and appropriate state actions for successful implementation of the program; and g. Specification of the adequate authority and capability of the local government to implement the program.

N.Y. EXEC. LAW § 915(4)(a) – (g).

In addition, in making a determination as to whether the LWRP is consistent with state coastal policies, the Secretary will look to determine whether the local program incorporates the following:

- a. The facilitation of appropriate industrial and commercial uses which require or can benefit substantially from a waterfront location . . . b. The increased use of and access to coastal waters and the waterfront from water-related activities . . . c. The promotion and preservation of scenic,



tionship between the LWRP and local comprehensive land use plans and zoning.<sup>70</sup>

The provisions of the Waterfront Revitalization and Coastal Resources Act are further explained in title 19, part 600 of the New York Codes, Rules and Regulations, adopted pursuant to section 913 of the New York Executive Law to implement the Act as it pertains to state agencies. The regulations make clear that one benefit of adopting an LWRP is that where a local government has one approved, state agency programs must be consistent with the locally adopted plan "to the maximum extent possible."<sup>71</sup> While the regulations strongly encourage state agencies to consider the coastal policy explanations and guidelines contained in the approved New York State Coastal Management Program document,<sup>72</sup> the regulations do not address how the State's program can best be coordinated with local land use planning and regulatory controls.

Through its guidebook, "Making the Most of Your Waterfront: Enhancing Waterfronts to Revitalize Communities," the Division of Coastal Resources offers local governments a step-by-step blueprint on how to create a vision for not only managing their coast, but also for turning it into an economically prosperous and aesthetically pleasing environment.<sup>73</sup> The guide urges leaders to

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historic, cultural and natural resources as community amenities and tourist designations. d. The strengthening of the economic position of the state's major ports and harbors. e. The re-use of existing infrastructure and building stock and the removal of deteriorated structures and unsightly conditions that have negative effects upon the waterfront area and adjacent neighborhoods. f. The application of local aesthetic considerations in the design of new structures and the redevelopment of waterfront sites. g. The protection of sensitive ecological areas . . . Such protection will assure that land use or development will not affect such areas. h. A statement identifying those elements of the program which can be implemented by the local government, unaided, and those that can only be implemented with the aid of other levels of government or other agencies . . . i. The establishment of a comprehensive harbor management plan and the means for its implementation.

*Id.* § 915(5) (a) – (i).

70. Although N.Y. EXEC. LAW § 915(4)(g) requires local governments to specify their authority and capability to implement the plan, and presumably this would be accomplished through local comprehensive planning, zoning and other land use controls, these are not mentioned by name.

71. N.Y.C.C.R.R. tit. 19, § 600.3(c).

72. *Id.*

73. NYSDOS Division of Coastal Resources, *Making the Most of Your Waterfront: Enhancing Waterfronts to Revitalize Communities*, available at [http://www.nyswaterfronts.com/communities\\_guidebook\\_LWRP.asp](http://www.nyswaterfronts.com/communities_guidebook_LWRP.asp) (last visited Apr. 16, 2005).



consult with their communities at large as well as stakeholders in their efforts to develop a plan for the creation of an LWRP.<sup>74</sup> In one of several highlighted success stories, the guide tells how the cities of Towanda and North Towanda have enhanced an old industrial and shipping area of the Erie Canal by creating waterfront parks and docking facilities, as well as adding an amphitheatre and waterfront promenade.<sup>75</sup>

The LWRP has enabled some communities to realize planning efforts that were decades in the making. The Town of Southold, for example, had attempted to update its Master Plan in 1985 with the aim of preserving and enhancing its waterfront.<sup>76</sup> Though the town had adopted several local laws designed to aid the waterfront and shared the visions articulated by the Long Island Sound Comprehensive Management Plan, the town was able to integrate all of these policies through its creation of an LWRP.<sup>77</sup> By including the entire town in the protected area, Southold used the LWRP as a means of enacting a new comprehensive plan.<sup>78</sup>

Not all local governments have been successful in creating an LWRP. Despite anticipation by the Department of State that approximately 115 communities would enact local plans,<sup>79</sup> to date only sixty-two have completed all of the necessary steps in order to receive authorization for their LWRPs.<sup>80</sup> For some municipalities the process of determining their goals for the improvement of their waterfront has been lengthy and controversial.<sup>81</sup> The Department of State possesses authority to certify an area of state

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74. *Id.* at 7.

75. *Id.* at 11.

76. *Town of Southold Local Waterfront Revitalization Plan, Section II K – Inventory & Analysis B.2*, available at <http://www.southoldtown.northfork.net/LWRP/LWRP.htm> (last visited Apr. 16, 2005).

77. See generally *id.* at B.2 –B.40.

78. See Katie Thomas, *Southold: Waterfront Proposal Accepted; Revitalization Plan Will Guide Future Development and Make Town Eligible for Additional Funding*, *NEWSDAY*, Dec. 2, 2004, at A20.

79. Stephen L. Kass & Michael B. Gerrard, *Managing New York's Coastal Zones* 3, *N.Y.L.J.*, Feb. 23, 1988.

80. New York State Coastal Management Program: LWRP Status Sheet September 1, 2004, available at [www.nyswaterfronts.com/downloads/pdf/LWRP\\_status\\_sheet.pdf](http://www.nyswaterfronts.com/downloads/pdf/LWRP_status_sheet.pdf) (last visited Apr. 16, 2005) [hereinafter LWRP Status Sheet].

81. See, e.g., Emi Endo, *In North Hempstead; Waterfront Village Seeks the Water; Manorhaven Ponders a Plan to Bring its Hidden Asset to Life*, *NEWSDAY*, Oct. 3, 1996, at E11 (describing the Village of Manorhaven's five year process of drafting an LWRP designed to provide public access to the waterfront). To date, the Village of Manorhaven has not adopted its LWRP. See LWRP Status Sheet, *supra* note 80, at 1.

significance, and thereby overrule any policies articulated by an LWRP.<sup>82</sup>

In addition to the preparation of LWRPs, in 1992, local governments were authorized to develop comprehensive harbor management plans,<sup>83</sup> and to adopt local laws or ordinances to implement such plans.<sup>84</sup> The implementing regulations allow local governments to submit a harbor management plan separate and apart from an LWRP or local governments may augment their LWRP by integrating with it a harbor management plan.<sup>85</sup> Similar to some of the considerations relevant to local comprehensive land use plans, harbor management plans are required to contain an inventory and analysis of existing uses, features and conditions in the area, consider regional needs, and contain short-term and long-term goals.<sup>86</sup> The issues discussed in the next section pertaining to the legal significance of the LWRP vis-à-vis the local comprehensive land use plan are also applicable to the local comprehensive harbor management plans.

### III. Local Comprehensive Planning and Zoning as They Relate to the LWRP

It is important to ensure that locally developed and state-approved waterfront revitalization plans are appropriately integrated into the local land use planning and zoning regulatory framework. By so doing, municipalities are able to effectively provide implementation mechanisms that support the principles and goals delineated in the waterfront plan through the use of their zoning powers. The statutes contemplate, and in practice there are, two separate and distinct plans – the comprehensive land use

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82. The City of New Rochelle, for example, could not reach an agreement with the state in regards to the future of Davids Island, an abandoned military fort on the Long Island Sound once under consideration for development by Donald Trump. Thus, while the City adopted the LWRP by local law in 2000, the plan was not approved by the Secretary of State. For information on Davids Island see, [www.fcwc.org/issues/monthly/0602\\_activist\\_davids\\_island.htm](http://www.fcwc.org/issues/monthly/0602_activist_davids_island.htm) (last visited Apr. 16, 2005).

83. N.Y. EXEC. LAW § 922. A comprehensive harbor management plan is “a plan to address the problems of conflict, congestion and competition for space in the use of harbors, surface waters and underwater lands of the state within a city, town or village or bounding a city, town or village to a distance of fifteen hundred feet from shore.” NYSDOS Coastal Mgmt. Program, *Guidelines for the Preparation of Harbor Management Plans*, available at <http://nyswaterfronts.com/downloads/pdfs/hmpguide.pdf> (last visited Apr. 16, 2005).

84. N.Y.C.C.R.R. tit. 19, § 603.1(b)(2004).

85. *Id.* § 603.3.

86. *Id.* § 603.3(a)-(e).

plan and the LWRP. Where a local government develops an LWRP after the adoption of a comprehensive land use plan, does the LWRP automatically become an amendment to the comprehensive land use plan?<sup>87</sup> If the LWRP does not merge with a locally adopted comprehensive plan and there are inconsistencies between the LWRP and the comprehensive, which plan governs for purposes of zoning? Where an LWRP is enacted and a municipality later adopts or amends a comprehensive land use plan, what mechanisms are in place to ensure consistency among the two documents?

### A. The Comprehensive Land Use Plan in New York

In New York, zoning is required to be in accordance with the comprehensive land use plan.<sup>88</sup> Prior to 1993 there was no statutory definition of what a comprehensive plan was; rather, it was left to the common law to provide guidance.<sup>89</sup> Historically, the courts found it easier to describe what the comprehensive plan was not, including that it was not necessarily required to be a written document, and the judicial approach emphasized flexibility to meet the changing needs of communities.<sup>90</sup> The local legislative body of a municipality may prepare the plan or they may

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87. Absent clear guidance, some have suggested that, "A local waterfront management plan *can be* viewed as an addition to a municipality's comprehensive plan. . . ." See MARY E. MOHNACH & KATHRYN M. RYAN, *WELL GROUNDED DESKBOOK FOR LAWYERS AND PLANNERS: LOCAL LAND USE LAW AND PRACTICE IN NEW YORK* 127 (John R. Nolon ed., 1998) (emphasis added). See also JOHN R. NOLON, *WELL GROUNDED: SHAPING THE DESTINY OF THE EMPIRE STATE: LOCAL LAND USE LAW AND PRACTICE* 225 (1998). However, Professor Nolon also advises that, "Any coastal municipality that is engaging in comprehensive planning for the first time or amending its plan may consider drafting a *separate waterfront plan* in order to receive funding and other benefits under the program." *Id.* at 226 (emphasis added).

88. N.Y. TOWN LAW § 263 (McKinney 1996) discusses the purposes and view of zoning and mandates that "such regulations shall be made in accordance with a comprehensive plan. . . ." See also N.Y. VILLAGE LAW § 7-704 (McKinney 1996) for identical language and N.Y. GEN. CITY LAW § 20(25) (McKinney 1996) which mandates that zoning be in accordance with a "well considered plan."

89. SHELDON W. DAMSKY ET AL., *ALL YOU EVER WANTED TO KNOW ABOUT ZONING* (3d ed. 1999).

90. Even in 1982, the 4th Department stated, "There is no precise definition of the term 'comprehensive plan,' nor has the term been equated with any particular written document; a comprehensive plan is determined by examining all relevant evidence." *Kravetz v. Plenge*, 446 N.Y.S.2d 807, 811 (1982). See also *Place v. Hack*, 230 N.Y.S.2d 583 (1962) ("What constitutes 'comprehensive planning'? It is easier to determine what a 'comprehensive plan' is not, than to define what it is. It is not necessarily a 'master plan' such as may be drafted by a municipality before embarking on a program of capital improvements; . . . nor need it be a written plan . . . . The comprehensive plan in New York and most jurisdictions is neither a written document nor a

assign the responsibility for plan development to the local planning board or a special board.<sup>91</sup>

The 1993 amendments to the planning and zoning enabling acts offered for the first time a statutory definition of the term "comprehensive plan" describing it as "the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the . . ." municipality.<sup>92</sup> While this statutory change represented an effort to develop a clear and uniform sense of what precisely a comprehensive land use plan is in New York, the Legislature intentionally rejected the notion of requiring all comprehensive plans to be written documents and to conform to the new law.<sup>93</sup> Although it is somewhat disappointing that the Legislature did not take the bold step of firmly mandating a written plan and mandating that all plans follow the formula set forth in statute, the new law represented a compromise after three years of negotiation.<sup>94</sup>

### **1. Coordination and Consistency Between the Comprehensive Plan and the LWRP in New York**

By definition, an LWRP is a written plan that must be submitted to and approved by the State of New York.<sup>95</sup> It can be diffi-

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'plan' in the usual sense of that term, unless an underlying purpose to control land use for the benefit of the whole community may be regarded as such.")

91. N.Y. TOWN LAW § 272-a(4) (noting that where the planning board or a special board develop the plan, the proposed comprehensive plan is to be a recommendation only back to the local legislative body). *See also* N.Y. VILLAGE LAW § 7-722(4); N.Y. GEN. CITY LAW § 28-a(5).

92. N.Y. TOWN LAW § 272-a(2)(a); N.Y. VILLAGE LAW § 7-722 (2)(a); and N.Y. GEN. CITY LAW § 28-a(3)(a). The City of New York is exempt. *See* N.Y. GEN. CITY LAW § 28-a(1).

93. "It is the intent of the legislature to encourage, but not to require, the preparation and adoption of a comprehensive plan pursuant to this section. Nothing herein shall be deemed to affect the status or validity of existing master plans, comprehensive plans, or land use plans." N.Y. TOWN LAW § 272-a(1)(h); N.Y. VILLAGE LAW § 7-722(1)(h); N.Y. GEN. CITY LAW § 28-a(2)(h).

94. *See* PATRICIA E. SALKIN, *NEW YORK ZONING LAW AND PRACTICE* § 4:04 (4th ed. 1999). Among the concerns discussed during the negotiations were fears that a statutory definition would change existing caselaw requiring a written plan where no requirement previously existed, thereby voiding previously valid plans; and the burdens that could be placed upon municipalities to develop new written plans absent a funding stream from the State to cover all or even part of the cost of such a mandate.

95. *See* N.Y. EXEC. LAW § 915.



cult to prove consistency between this plan and an amorphous ongoing planning process that can support the validity of the comprehensive land use plan for purposes of implementing zoning.

Assuming that a municipality chooses to adopt a comprehensive land use plan in accordance with the guidance supplied in state statute more than a decade ago, the statute enumerates a series of topics that may be contained in the plan, tailored to the needs of each individual locality.<sup>96</sup> Among the items specified are:

- (a) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development . . . are based.
- (b) Consideration of regional needs and the official plans of other government units and agencies within the region . . . .
- (d) Consideration of agricultural uses, historic and cultural uses, coastal and natural resources and sensitive environmental areas . . . .
- (n) All or part of the plan of another public agency.<sup>97</sup>

While coastal resources are to be considered under this provision, the statute does not specifically reference the relationship between the comprehensive plan and an LWRP. What makes this omission more troubling is the fact that another section of the statute addresses the need to ensure review and coordination between the comprehensive plan and agricultural and farmland protection plans.<sup>98</sup>

Assuming that the failure to specifically and affirmatively require, where applicable, review and coordination between the comprehensive plan and an existing LWRP was an unintentional oversight,<sup>99</sup> the Legislature should amend the comprehensive

96. N.Y. TOWN LAW § 272-a(3); N.Y. VILLAGE LAW § 7-722(3); N.Y. GEN. CITY LAW § 28-a(4).

97. *Id.* The statutes enumerate fifteen topics that might appropriately be integrated into the local comprehensive land use plan.

98. N.Y. TOWN LAW § 272-a(9), N.Y. VILLAGE LAW § 7-722(9), and N.Y. GEN. CITY LAW § 28-a(1) all provide that where all or part of an agricultural district or lands receiving agricultural assessments within the municipality exist, a comprehensive plan and any amendments thereto "shall take into consideration applicable county, agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law."

99. The author makes this assumption since the author was a member of the Legislative Commission on Rural Resources's Land Use Advisory Committee when this legislation was developed and negotiated. No one raised the question of connectivity between the comprehensive plan and the LWRP at that time. Had this been proposed, it is likely that it would have been included in the statute. For information



plan statutes to clearly express the intent that the two documents are interrelated. Professor John R. Nolon has suggested that since a municipality may adopt an LWRP using the same procedure as that specified for the adoption of a comprehensive land use plan, that this, in and of itself, is enough to provide the LWRP with the "legal authority and weight provided a formally adopted comprehensive plan."<sup>100</sup> Furthermore, he maintains that "[c]oordinating the LWRP with the local comprehensive plan and land use regulations will eliminate legal confusion, prevent legal challenges to land use regulations, and provide for a more orderly planning and regulatory process."<sup>101</sup>

The Department of State suggests in a recently published guidebook, "As a planning document, a Local Waterfront Revitalization Program is a locally prepared land and water use plan for a community's developed, natural, public, and working waterfronts. It provides a comprehensive framework within which a community's vision for its waterfront can be formalized."<sup>102</sup> In advising local governments on what to consider when developing an LWRP, the Guidebook recommends obtaining, among other things, the municipal comprehensive or master plan or other land use plans, and local zoning and land use laws.<sup>103</sup> The process for developing the LWRP recommended in the Guidebook, including community visioning, engaged citizen participation, and coordination with other agencies and departments within the municipality is similar to the process that may be employed to develop a comprehensive land use plan.

There is no caselaw on point to clarify the legal relationship between the two plans, although when reviewing planning and zoning decisionmaking, courts have referenced the existence of

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about the work of the Land Use Advisory Committee, see James A. Coon, et al., *The Land Use Recodification Project*, 13 PACE L. REV. 559 (1993); NEW YORK STATE LEGISLATIVE COMMISSION ON RURAL RESOURCES DEVELOPMENT AND STATE LAND USE ADVISORY COMM., KEEP NEW YORK GROWING: BALANCING WORKING LANDS, CONSERVATION (1998).

100. JOHN R. NOLON, WELL GROUNDED: SHAPING THE DESTINY OF THE EMPIRE STATE: LOCAL LAND USE LAW AND PRACTICE 226 (1998). Professor Nolon also suggests that "LWRPs can gain additional authority if they are also adopted pursuant to the formal requirements of state law for the adoption of a comprehensive plan. All land use regulations, including those affecting coastal areas, must be adopted in conformance with the comprehensive plan." *Id.* at 228.

101. *Id.* at 228-9.

102. NYSDOS Division of Coastal Resources, *Guidebook: Making the Most of Your Waterfront: Enhancing Waterfronts to Revitalize Communities 4* (2004) available at <http://nyswaterfronts.com>.

103. *Id.* at 23.

LWRPs as a demonstration of certain planning goals,<sup>104</sup> likened the development of an LWRP to the development of a comprehensive land use plan,<sup>105</sup> and at least one court found that re-zoning was not inconsistent with an LWRP.<sup>106</sup> The fact remains, though, that the state planning and zoning enabling acts require that municipal land use regulations be in accordance with a comprehensive land use plan adopted pursuant to statute.<sup>107</sup>

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104. For example, in *Bonnie Briar Syndicate, Inc. v. Town of Mamaroneck*, 94 N.Y.2d 96 (1999) the Court of Appeals discussed the Town's land use policies regarding certain property by reference to the Town's 1966 master plan, an update to the plan in 1976, a county study completed in 2000, and the 1986 adoption of an LWRP by the Towns of Mamaroneck and Larchmont "for a comprehensive examination of land-use policies. The court also discussed the fact that after the LWRP was adopted, the Town retained a consultant "to assist in formulating its comprehensive plan to address and best implement the goals stated in the LWRP." *Id.*

105. In *Duke v. Town of Huntington*, 581 N.Y.S.2d 978 (N.Y. Sup. Ct. 1991) the Supreme Court, Suffolk County struck down as excessive, a moratorium that had been in effect for three years while the Town was developing its LWRP. The court noted that moratoria are permissible to maintain the status quo "pending the preparation and enactment of a comprehensive zoning ordinance. . ." and that in the present case, the Town had adopted a master plan in 1980, completed a preliminary draft of a zoning ordinance in 1983, and in 1989 enacted a moratorium on the construction of docks in town waterways until after the adoption of an LWRP. *Id.* The court, while specifically stating that it is permissible to use the moratorium tool for the development of a comprehensive plan, seemed to imply that the tool can also be used for the development of an LWRP, thereby perhaps subtly suggesting that the LWRP is analogous to the comprehensive plan.

106. *Matter of Save our Forest Action Coalition, Inc. v. City of Kingston*, 675 N.Y.S.2d 451 (N.Y. App. Div. 1998) ("Although no single factor is dispositive, in evaluating a claim of spot zoning a court may consider several factors, including whether the rezoning is consistent with a comprehensive land use plan, whether it is compatible with surrounding uses, the likelihood of harm to surrounding properties . . . However, the ultimate test is 'whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community.'" *Id.* (citations omitted)). The court then rejected "the contention that the rezoning determination was inconsistent with the Local Waterfront Revitalization Program adopted in 1992 to promote the goals (among others) of improving coastal areas of the Hudson River and Rondout Creek for water-dependent scenic recreational and economic uses . . ." *Id.* at 246 A.D.2d at 222.

107. N.Y. TOWN LAW § 272-a(11), N.Y. VILLAGE LAW § 7-722-a(11), N.Y. GEN. CITY LAW § 28-a(12)(a). Another piece of evidence documenting the disconnect between the planning and zoning enabling acts and the Local Waterfront Revitalization Program is the Department of State's popular, GUIDE TO PLANNING AND ZONING LAWS OF NEW YORK STATE (February 2004), available at <http://www.dos.state.ny.us/lgss/planzone.html>. This guide contains a compilation of pertinent statutes that impact local land use planning and zoning from not just the town law, village law and general city law, but also from the education law, environmental conservation law, public health law, highway law, real property law, real property tax law, general construction law, public officers law, and social services law. There is no specific reference to the executive law which contains the local waterfront revitalization program.

## 2. New York Municipalities Have Opted for Different Approaches with Respect to Coordinating the LWRP and Comprehensive Planning

Because New York's regulations do not specifically address how the State's program is to be best coordinated with local land use planning and regulatory controls, municipalities have sought different ways to assure that their local waterfront revitalization programs are consistent with existing comprehensive land use plans, and the zoning ordinances that implement them. While some municipalities work to ensure that LWRPs are created in accordance with existing comprehensive plans, others have used LWRPs as a means to adopt a new vision for their local waterfront, amending their comprehensive plans after the fact to ensure consistency and facilitate implementation.

For example, in Croton-on-Hudson, an LWRP was adopted by the Village government in 1992 to reflect their vision for the waterfront, including recent development possibilities.<sup>108</sup> Since all of the land in Croton-on-Hudson falls within the New York State Coastal Zone, the LWRP and its policies effectively created a new land use plan for the entire Village.<sup>109</sup> Because the portions of the LWRP were inconsistent with existing plans, it recommended updating the Village's 1977 Master Plan, or creating a new Comprehensive Plan to provide for consistency with the Coastal Zone policies.<sup>110</sup> The LWRP specifically notes that "the creation of an updated Master Plan or Comprehensive Plan (which itself will be consistent with LWRP policies) will help 'ensure that the planning and development guidelines and documents for the Village are consistent.'"<sup>111</sup> Following the approval of Croton-on-Hudson's LWRP, a new Comprehensive Plan for the Village was completed in 2003, and recommendations for updating the Village Zoning Code are being considered.<sup>112</sup> Similarly, the City of Buffalo has developed an LWRP that "will become a key component of the City's Comprehensive Plan."<sup>113</sup> The city has taken the position

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108. CROTON-ON-HUDSON, N.Y. COMPREHENSIVE PLAN, § 1.2 (2003), *available at* [http://www.crotononhudson-ny.gov/Public\\_Documents/crotonhudsonny\\_webdocs/compPlan/Chapter1.PDF](http://www.crotononhudson-ny.gov/Public_Documents/crotonhudsonny_webdocs/compPlan/Chapter1.PDF).

109. In fact, the 1992 LWRP is discussed under the *Previous Comprehensive Planning Efforts in Croton-on Hudson* section of the 2003 Comprehensive Plan. *Id.*

110. CROTON-ON-HUDSON, N.Y. COMPREHENSIVE PLAN § 2.2.

111. *Id.*

112. *Id.*

113. BUFFALO, N.Y., LOCAL WATERFRONT REVITALIZATION PLAN, *available at* [http://www.ci.buffalo.ny.us/document\\_1671\\_173.html](http://www.ci.buffalo.ny.us/document_1671_173.html) (last visited Apr. 16, 2005).

that an LWRP must be prepared to reflect current trends and conditions in order to be effective, and therefore, its main purpose should be to develop a comprehensive plan and vision for the waterfront that will serve as the basis for long-term development decisions.<sup>114</sup>

To reflect changing conditions along New York City's coastline, a new Comprehensive Waterfront Plan (CWP) was developed in the early 1990s to express the city's long-range vision for the waterfront and propose strategies to guide future waterfront development, including any amendment to the LWRP.<sup>115</sup> This comprehensive plan was "incorporated into [the] city policy through new waterfront zoning text adopted in 1993 and in revisions to the LWRP."<sup>116</sup> Under the newly revised Waterfront Revitalization Program, local discretionary actions are reviewed for consistency in accordance with existing regulatory processes to ensure that the LWRP policies are being implemented.<sup>117</sup> The City Planning Commission acts as the City Coastal Commission and makes the necessary consistency determinations.<sup>118</sup>

## **B. Comprehensive Planning in Other States**

The relationship between the comprehensive land use plan and zoning differs across the country, with modern trends requiring the preparation of a comprehensive land use plan prior to the adoption of zoning and then requiring that zoning be consistent with the locally adopted comprehensive plan.<sup>119</sup> In Connecticut, for example, where a town zoning ordinance specifically referenced the requirement for consistency with the State's Coastal Management Act, the Superior Court concluded that these policies

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114. *Id.*

115. Press Release, NYSDOS, Division of Coastal Resources, New York City, *available at* [http://nyswaterfronts.com/initiatives\\_NYC.asp](http://nyswaterfronts.com/initiatives_NYC.asp) (last visited May 16, 2005).

116. *Id.*

117. *Id.*

118. *Id.*

119. See Stuart Meck, *The Legislative Requirement that Zoning and Land Use Controls Be Consistent with an Independently Adopted Local Comprehensive Plan: A Model Statute*, 3 WASH. U. J.L. & POL'Y 295 (2000). Professors Juergensmeyer and Roberts report, however, that "the majority of states whose legislation enables the preparation of comprehensive plans do not require local governments to prepare plans, and comprehensive plans in these states are principally land use documents without the force of law." They note that a number of states, either by statute or court decision have given enhanced legal significance to the plan, including California, Delaware, Florida, Kentucky, Maine, Nebraska, Oregon, South Dakota and Vermont. See JULIAN CONRAD JUERGENSMEYER & THOMAS E. ROBERTS, *LAND USE PLANNING AND CONTROL LAW* § 2.11-2.12 (West Group 1998).



were therefore part of the comprehensive zoning plan for the town.<sup>120</sup> In Delaware, where the local coastal land use plan stated that “all development should be consistent with the land use plan,” the Chancery Court determined that decisions to re-zone should be consistent with both the coastal plan and the comprehensive land use plan.<sup>121</sup>

In Oregon, statewide comprehensive planning laws require, among other things, that local comprehensive plans include special plan elements for coastal resources.<sup>122</sup> Goal 19, for example, addresses ocean resources, seeking to conserve the long-term values, benefits and resources of the oceans.<sup>123</sup> Under Goal 17, shoreland planning requires that local comprehensive plans include shoreland boundaries and special zoning requirements for lands within the boundary.<sup>124</sup> Oregon’s land use program, while reserving to municipalities local land use decisionmaking, addresses lack of coordination of uses of land, and therefore states that a local comprehensive plan is “[a] plan ‘coordinated’ when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been coordinated and accommodated as much as possible.”<sup>125</sup>

As part of the State of Washington’s coastal program, municipalities are authorized to adopt shoreline management programs (SMPs) “to prevent the inherent harm in an uncoordinated and

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120. *Colangelo v. Stratford Zoning Board of Appeals*, No. CV 3157685S, 1997 WL 78172, at \*5 (Conn. Super. Ct. Feb. 4, 1997). The Court found “the policies of the Coastal Management Act have been incorporated into the Stratford regulations and therefore are part of the comprehensive zoning plan of the town.” *Id.* See *Jacques v. Town of Waterford Planning Zoning Comm’n*, No. 566413, 2004 WL 1098686, at \*8 (Conn. Super. Ct. Apr. 28, 2004) noting that “The Connecticut Coastal Management Act must be considered as a part of the comprehensive plan.”

121. *Concerned Citizens of Cedar Neck v. Sussex County Council*, No. 1893-S, 1998 WL 671235, at \*3 (Del. Ch. Aug. 14, 1998).

122. See OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, A CITIZEN’S GUIDE TO THE OREGON COASTAL MANAGEMENT PROGRAM 4 (2001), available at <http://egov.oregon.gov/LCD/docs/publications/citzngrd.pdf> (last visited Apr. 16, 2005). See also OR. REV. STAT. § 196.425(1) (1983).

123. *Id.* at 22.

124. *Id.* at 16. The two major objectives in planning for the shoreland are: 1) to set aside lands for uses that need to be located along the shoreline; and 2) to protect the natural fringe between land and water. *Id.*

125. OR. REV. STAT. § 197.015(5) (1983); see also Steven R. Schell, *Oregon Land Use Symposium: Living with the Legacy of the 1970’s: Federal/State Coordination in the Coastal Zone*, 14 ENVTL. L. 751 (1984).



piecemeal development of the state's shorelines."<sup>126</sup> Pursuant to this program, municipalities may adopt a shoreline master program that while based upon state guidelines, is tailored to meet the specific needs of the locality.<sup>127</sup> While acknowledging that the adoption of a shoreline management plan is essentially a shoreline comprehensive plan and zoning ordinance, the State reports that "Some local governments maintain 'stand alone' SMPs, while other SMPs are integrated into Growth Management Act plans and ordinances."<sup>128</sup>

When the State of Wisconsin revised their planning and zoning statutes in 1999, they required that comprehensive plans be consistent not only with zoning, but also with a host of other government decisions and plans,<sup>129</sup> including shoreland and wetland zoning and "any other ordinance, plan, or regulation of a local government that relates to land uses."<sup>130</sup>

#### IV. Conclusion

Since 1995, more than 500 local waterfront revitalization grants totaling more than \$43 million have been awarded to local governments for various waterfront projects including the development of local plans.<sup>131</sup> To further ensure that New York's local governments are most effectively planning for and managing their waterfronts, the Legislature should take affirmative action to statutorily express that once adopted and approved, an LRWP becomes part of an existing comprehensive land use plan. This will not only lay a foundation upon which zoning must be adopted and amended consistent with the policies, principles and strategies contained in the LRWP, it will also provide added opportunities for local enforcement of waterfront protections through local zoning. Because New York is not alone in its need to clarify the relationship between the local comprehensive land use plan and the

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126. Shoreline Management Act of 1971, RCW 90.58; *see also* WASHINGTON DEPARTMENT OF ECOLOGY, INTRODUCTION TO WASHINGTON'S SHORELINE MANAGEMENT ACT, ECOLOGY PUBLICATION 99-113 (2003).

127. *Id.* (noting that more than 200 cities and all 39 counties in the State have adopted shoreline master programs).

128. WASHINGTON DEPARTMENT OF ECOLOGY, SHORELINE MANAGEMENT PROGRAM, LOCAL PLANNING, *available at* [http://www.ecy.wa.gov/programs/sea/sma/local\\_planning/index.html](http://www.ecy.wa.gov/programs/sea/sma/local_planning/index.html) (last visited Apr. 16, 2005).

129. WIS. STAT. § 66.0295 (1999).

130. *Id.* § 66.1001(h).

131. *See* Adirondack Park Agency, *Spotlight On: Monies Dedicated to Waterfront Revitalization Across New York State*, COMMUNITY CHAT, vol. 3, issue 2 (2003).

local coastal protection plan, Congress should, when reauthorizing the Coastal Zone Management Act, ask states to specifically link the two plans.